STATE OF MICHIGAN
IN THE SUPREME COURT

HEATHER LYNN HANNAY,	
Plaintiff/Appellee,	Supreme Court: 146763
v	Court of Appeals: 307616
DEPARTMENT OF TRANSPORTATION,	Court of Claims: 09-000116-MZ
Defendant/Appellant.	

Brief of Amicus Curiae Michigan County Road Commission Self-Insurance Pool

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INTRODUCTION

The motor vehicle exception to governmental immunity is a limited waiver of immunity, making governmental agencies liable only for "bodily injury and property damage" arising from the negligent operation of a motor vehicle owned by that governmental agency. At issue in this case is whether Plaintiff's claim for wage loss is encompassed within the "bodily injury" limitation of the statute.

As such, this case presents an issue of statutory interpretation. Under Michigan law, statutes imposing liability on governmental agencies in derogation of the common law must be narrowly construed. *Robinson v Detroit*, 462 Mich 439, 460; 613 NW2d 307 (2000). Because the Legislature is presumed to understand the meaning of the language it enacts into law, statutory analysis begins with the wording of the statute itself. *Carr v Gen Motors Corp*, 425 Mich 313, 317; 389 NW2d 686, *amended on reh in part* 426 Mich 1231 (1986). Each word of a statute is presumed to be used for a purpose, and, as far as possible, effect must be given to every clause and sentence. *Bd of Regents of Univ of Michigan v Auditor Gen*, 167 Mich 444, 450; 132 NW 1037 (1911). A court may not assume that the Legislature inadvertently made use of one word or phrase instead of another. *Detroit v Redford Twp*, 253 Mich 453, 456; 235 NW 217 (1931). Where the language of the statute is clear and unambiguous, a court must follow it. *City of Lansing v Lansing Twp*, 356 Mich 641, 649; 97 NW2d 804 (1959).

Application of these well settled and venerable principles of interpretation to the issue presented here mandates reversal of the Court of Appeals because Plaintiff's claimed lost wages are not a "bodily injury" as that phrase has been defined. Moreover, this Court should decline Plaintiff's invitation to reexamine *Wesche v Mecosta Co Rd Comm*, 480 Mich 75; 746 NW2d 847 (2008). Plaintiff's effort to discern legislative intent from a comparative study of different sections of the Government Tort Liability Act falls flat because there is nothing inconsistent, or particularly revealing, in the Legislature's use of the phrase "bodily injury" to limit the actual

waivers of immunity, and its use of the term "injuries" in connection with other statutes placing conditions on the actual waivers of immunity.

Put simply, Plaintiff's arguments advocate a broad reading of the exceptions to governmental immunity. To adopt them would mark a dramatic change of course from the principles of governmental immunity identified by this Court in *Ross v Consumers Power Co*, 420 Mich 567; 363 NW2d 641 (1984). For the reasons discussed at length here, this Court should reverse the Court of Appeals, thereby preserving the predictability, stability and cohesiveness in this area of the law that began with *Ross*, and has continued for thirty years since that decision.

STATEMENT OF APPELLATE JURISDICTION

Amicus curiae Michigan County Road Commission Self-Insurance Pool ("MCRCSIP" or the "Pool") adopts Appellant Michigan Department of Transportation's Statement of Appellate Jurisdiction.

STATEMENT OF AMICUS CURIAE INTEREST

The Michigan County Road Commission Self-Insurance Pool ("MCRCSIP" or the "Pool") supplies, among other things, general liability and auto coverage for seventy-six county road commissions within the state of Michigan. According to statistics published by the Michigan Department of Transportation, county road commissions within this state are responsible for maintaining 89,755 miles of county roads. <www.michigan.gov/mdot/0,1607,7-151-9620_11154-129683--,00.html> (accessed February 18, 2014).

The Pool was organized pursuant to Michigan statutory authority, MCL 124.5, and began operation on April 1, 1984. The individual county road commissions are the members of the Pool. In other words, the Pool is comprised of the very entities that it serves.

Three main objectives for pooling have been identified by the Pool: (1) to allow members to manage, control, and reduce losses by establishing a joint effort to vigorously defend claims, and by providing a united effort to effect favorable legislation; (2) to maintain control over funds necessary to provide needed protection; and (3) to lower ultimate costs. Consistent with its history and stated objectives, the Pool has a strong interest in any aspect of the law which could impact the day-to-day operations of its members, including exposure to tort liability arising from those operations. Along these lines, the Pool has a strong interest in ensuring that the exceptions to governmental immunity are construed consistently and narrowly.

For these reasons, MCRCSIP and its member road commissions have a strong interest in the issues presented here.

STATEMENT OF ISSUES PRESENTED

Amicus Curiae MCRCSIP adopts Appellant Michigan Department of Transportation's Statement of Issues Presented.

STATEMENT OF FACTS

Amicus Curiae MCRCSIP adopts Appellant Michigan Department of Transportation's Statement of Facts.

STANDARD OF REVIEW

The grant or denial of summary disposition is reviewed *de novo*. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007). "Questions of statutory interpretation are also reviewed *de novo*." *Id.*

ARGUMENT

I. PLAINTIFF'S CLAIMED WAGE LOSS IS NOT A "BODILY INJURY" FOR WHICH GOVERNMENTAL IMMUNITY HAS BEEN WAIVED UNDER THE MOTOR VEHICLE EXCEPTION.

Plaintiff argues, in various different ways, that she is entitled to recover wage loss pursuant to the motor vehicle exception to governmental immunity. Her arguments advocate a broad, expansive reading of the immunity exception's plain language. However, this Court's longstanding precedent precludes a broad reading of the motor vehicle exception, or of any limited waiver of immunity. Moreover, Plaintiff's effort to divine legislative intent from the fact that the Legislature used the phrase "bodily injury" in the actual waivers of immunity throughout the Governmental Tort Liability Act ("GTLA"), but used the term "injuries" in companion statutes placing conditions on the actual waiver of immunity, lacks the force of logic and renders the word "bodily" nugatory. Ultimately, although Plaintiff never uses this word, her argument is that the immunity exceptions create a "threshold" for liability that, once crossed, opens the gates to traditional, unlimited tort liability. This threshold argument has already been expressly rejected by this Court, and should be again.

A. Fundamental Principles of Governmental Immunity

A brief discussion of the fundamental principles of governmental immunity is helpful to frame the issues here. The Legislature has the power to create a right to recover damages for injuries received due to the negligence of public authorities. *See, e.g., Sziber v Stout*, 419 Mich 514; 358 NW2d 330 (1984) (discussing the highway exception to governmental immunity); *Burnham v Byron Twp*, 46 Mich 555; 9 NW 851 (1881) (same). Because this right is purely statutory, the Legislature has the power to modify, abridge, or even abolish that right by appropriate action. *Westgate v Adrian Twp*, 161 Mich 333; 126 NW 422 (1910). The Legislature can also attach to the right conferred any limitation it chooses. *Moulter v City of*

Grand Rapids, 155 Mich 165; 118 NW 919 (1908) (overruled on other grounds in part by, *Grubaugh v City of St Johns*, 384 Mich 165; 180 NW2d 778 (1970)). Whether the limitations imposed are reasonable or unreasonable are questions for the Legislature and not for the courts, *id.*, so long as a limitation on a vested right does not violate the Constitution, *Grubaugh v City of St Johns*, 384 Mich at 175 (abrogated on other grounds, *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197; 731 NW2d 41 (2007)).

In Michigan, immunity for non-sovereign units of government is provided by statute in the GTLA, MCL 691.1401, *et seq.* Section 7 of the GTLA confers sweeping immunity on governmental agencies performing governmental functions. MCL 691.1407(1). Where the governmental agency is performing a governmental function, the immunity under § 7 is as broad as possible—extending to all governmental agencies for all tort liability. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 156; 615 NW2d 702 (2000) (consolidated with *Evens v Shiawassee Co Rd Comm'rs*).

The only exceptions to the broad grant of immunity are contained within the GTLA itself. *Id.* at 157 ("although governmental agencies may be under many duties, with regard to the services they provide to the public, only those enumerated within the statutorily-created exceptions are legally compensable if breached"). In *Nawrocki*, the Court stated that the purpose of its earlier opinion in *Ross v Consumers Power*, 420 Mich 567; 363 NW2d 641 (1984), was to create a "cohesive, uniform, and workable set of rules which will readily define the injured party's rights and the governmental agency's liability." *Id.* at 148-149. The *Nawrocki* Court commented that the failure to consistently follow *Ross* "has precipitated an exhausting line of confusing and contradictory decisions" which have created a "rule of law that is virtually impenetrable, even to the most experienced judges and legal practitioners." *Id.* at

149. Accordingly, the *Nawrocki* Court "return[ed] to a narrow construction of the highway exception predicated upon a close examination of the statute's plain language, rather than merely attempting to add still another layer of judicial gloss to those interpretations of the statute previously issued by [the Supreme Court and] the Court of Appeals." *Id.* at 150. In short, the immunity granted to governmental agencies is broad, and the statutory exceptions must be narrowly construed. *Nawrocki*, 463 Mich at 158-159.

In reviewing questions of statutory construction, a court's role is to discern the Legislature's intent. *Nawrocki,* 463 Mich at 159. This is accomplished by examining the plain language of the statute, and providing words with their common and ordinary meaning. *Id.* This plain language requirement, combined with the narrow construction requirement, is perhaps best illustrated by this Court's decision in *Stanton v City of Battle Creek*, 466 Mich 611; 647 NW2d 508 (2002). There, because the term "motor vehicle," as used in MCL 691.1405, was not defined in the statute, this Court utilized various dictionaries to arrive at the term's common and ordinary meaning. *Stanton*, 466 Mich at 617. The *Stanton* Court held that because immunity exceptions must be narrowly construed, where there are competing dictionary definitions only the narrowest one should be used. *Id.*

B. The History and Development of Statutory Governmental Immunity, and Particularly the Motor Vehicle Exception

An overview of the history of statutory governmental immunity in Michigan provides the context necessary to fully understand the GTLA. Between 1842 and 1939, any plaintiff wishing to assert a claim against the State of Michigan, including its agencies and institutions, was required to present the claim directly to the Legislature, or to the Board of State Auditors, which the Legislature had created to "examine and adjust all claims against the State, not otherwise provided for by general laws." Const 1850, art 8, § 4; *see also* Baylor, Ronald E., *Governmental*

Immunity in Michigan, § 3.2, ICLE (2009). Michigan's general law did not expressly authorize personal injury claims against the State, and the Michigan Supreme Court generally refused to authorize personal injury claims against the State in the absence of a clear and specific legislative waiver of immunity. *See, e.g., Mead v Mich Public Service Comm*, 303 Mich 168; 5 NW2d 740 (1942); *see also* Baylor, *supra* at § 3.2; Cooperrider, *The court, the legislature, and governmental tort liability in Michigan*, 72 Mich L R 187 (1973).

In 1939, the Legislature passed the Michigan Court of Claims Act, which conferred on the Court of Claims exclusive jurisdiction over all claims against the State in any of its forums. *See* Baylor, *supra* at § 3.2. Although the Court of Claims Act waived the State's liability from suit, it did not waive the State's immunity from tort liability while engaged in a governmental function. *Manion v State*, 303 Mich 1; 5 NW2d 527 (1942), cert den 317 US 677 (1942).

In 1943, the Legislature amended the Court of Claims Act by creating a sweeping waiver of the State's "immunity from liability for the torts of its officers and employees." 1943 PA 237; *see also* Baylor, *supra*, § 3.2. However, as described by Professor Cooperrider in his often-cited article, the Legislature "flinched" and repealed its waiver of immunity in 1945. Cooperrider, *supra* at 249; *see also* Baylor, *supra*, § 3.2. In its place, the Legislature enacted a statute making political subdivisions of the state of Michigan liable "[i]n any civil action ...to recover damages" only for the negligent operation by officers, agents, and employees of motor vehicles owned by the political subdivision, whether or not the political subdivision was engaged at the time of the operation of the motor vehicle "in a governmental function." 1945 PA 127, § 1 (MCL 691.151); *see also* Baylor, § 3.2.

In 1964, the Legislature passed the Governmental Tort Liability Act, 1964 PA 170, codified at MCL 691.1401, *et seq*. For the first time, in MCL 691.1407, the Legislature

affirmatively provided immunity to governmental agencies from tort liability from injuries arising out of the exercise or discharge of a governmental function. The 1964 Act contained three statutory exceptions to immunity: (1) negligent operation of motor vehicles; (2) defective highways; and (3) defective buildings. Baylor, *supra*, § 3.3.

MCL 691.1405, which contains the motor vehicle exception to governmental immunity, has remained unchanged since 1964:

> Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949, as amended, being §§ 257.1 to 257.923 of the Compiled Laws of 1948.

MCL 691.1405. Notably, the language of this statute—which creates liability for "bodily injury and property damage"—is considerably more narrow than its predecessor MCL 691.151, which created liability "[i]n any civil suit. . .to recover damages . . . ." Plaintiff's arguments here would have much more force if her case were controlled by MCL 691.151.

C. The Plain Language of the Motor Vehicle Exception, MCL 691.1405, Precludes Recovery For All Damages That Do Not Constitute "Bodily Injury and Property Damage."

Because the alleged wage loss claimed by the Plaintiff here does not constitute bodily injury suffered by her, the plain language of the GTLA precludes recovery for her alleged losses. The motor vehicle exception to governmental immunity makes a road commission "liable for *bodily injury and property damage* . . . ." MCL 691.1405(emphasis added). Therefore, under the statute's plain language—which requires strict compliance—these losses are not compensable against a governmental agency.

The immunity statutes must be read as narrowly as possible. The Plaintiff here challenges that principle of law. However, it is a venerable one that has deep roots in Michigan's jurisprudence. As noted above, in *Stanton,* 466 Mich at 617, this Court held that

where a term is not defined within the statute itself it is proper to turn to a dictionary for the common and ordinary meaning. *Stanton*, 466 Mich at 617. Where there are competing definitions, to comply with the requirement of strict construction, the most narrow definition must be chosen. *Id.*

Here, there is no definition of "bodily injury" contained within the GTLA. However, bodily injury is defined in Black's Law Dictionary (4th Ed.) (1951):

> **Bodily.** Pertaining to or concerning the body; **of or belonging to the body or the physical constitution; not mental but corporeal** . . . .
>
> * * *
>
> **Bodily injury. Any physical or corporeal injury**; not necessarily restricted to injury to the trunk or main part of the body as distinguished from the head or limbs. . . .

Id. at 221. (second and fourth emphases added).[1] This definition makes clear that the term "bodily injury" encompasses only things that are physical or corporeal injuries. Alleged wage loss is not a physical or corporeal injury. It does not, therefore, come within the common and ordinary definition of the term "bodily injury."

Case law from Michigan in the context of insurance coverage disputes confirms that this definition of "bodily injury" represents the common and ordinary meaning of that term. For example, in *Farm Bureau Mut Ins Co v Hoag*, 136 Mich App 326; 356 NW2d 630 (1984), the Court of Appeals needed to define the term "bodily injury" as it was used in a county's insurance policy. The Court looked to authority from other jurisdictions which, "[a]s a general rule . . . have found the term 'bodily injury' to be unambiguous and understood to mean hurt or

[1] The Fifth Edition of Black's Law Dictionary was not published until 1979. Therefore, this Fourth Edition definition was current at the time the GTLA was enacted in 1964. Also, this same definition first appeared in the Second Edition of Black's Law Dictionary, published in 1910. Therefore, by the enactment of the GTLA in 1964, the definition of the term "bodily injury," as a legal term of art, had long been stable.

harm to the human body, contemplating actual physical harm or damage to a human body." *Id.* at 334.

Similarly, in *State Farm Mutual Auto Ins Co v Descheemaker*, 178 Mich App 729; 444 NW2d 153 (1989), the Court of Appeals addressed whether the wife and children of a person who sustained bodily injury in an automobile accident were entitled to an additional $25,000 pursuant to the higher $50,000 "per accident" liability coverage afforded by the at-fault driver's policy. To resolve this question, the Court was required to determine whether the wife and children's claims for loss of consortium, society and companionship constituted their own "bodily injuries" for purposes of the policy. The Court held:

> First, the underlying policy defines a "bodily injury" as meaning "bodily injury to a person and sickness, disease or death which results from it." This definition of "bodily injury" has been found to be unambiguous and has been understood as contemplating "actual physical harm or damage to a human body." *Farm Bureau Mutual Ins. Co. of Michigan v. Hoag*, 136 Mich. App. 326, 334-335, 356 N.W.2d 630 (1984), and *see National Ben Franklin Ins. Co. of Michigan v. Harris*, 161 Mich. App. 86, 89, 409 N.W.2d 733 (1987). Nonphysical injuries, such as humiliation and mental anguish, that lack any physical manifestations do not constitute a "bodily injury." *Hoag, supra*, 136 Mich. App. at p. 335, 356 N.W.2d 630; *Harris, supra*, 161 Mich. App. at p. 89, 409 N.W.2d 733. Therefore, it follows that other nonphysical injuries, such as a loss of consortium, society and companionship, which lack any physical manifestations, are also not bodily injuries.

Descheemaker, 178 Mich App at 732.

Numerous other jurisdictions adopt the same position that claims for loss of consortium do not qualify as "bodily injuries" for insurance policy purposes. *See, e.g., United Services Auto Assn v Warner*, 64 Cal App 3d 957, 965; 135 Cal Rptr 34 (1976) ("[t]he fact that loss of consortium may have physical consequences does not convert the action into an action for bodily injury to the suffering spouse."); *Napier v Banks*, 9 Ohio App 2d 265; 224 NE2d 158, 162 (1967) ("a deprived spouse's reasoning that he has suffered damages to his property rights aside from damages because of his wife's bodily injury is ingenious, but invalid"); *Lampton v United*

Services Auto Ass'n, 835 P2d 532, 534 (Colo App 1992) ("A person who has lost the society, companionship, and services of his or her spouse has sustained a personal injury . . . .This loss, although tangible, real, and compensable, is not a bodily injury within the commonly accepted meaning of that term.").

Two cases from foreign jurisdictions address "bodily injury" limitations in a governmental immunity statute. A brief discussion of those cases is helpful, by analogy. In the first case, *Brenneman v Bd of Regents of Univ of New Mexico*, 135 NM 68; 84 P3d 685 (2003), the New Mexico Court of Appeals determined that loss of consortium damages were permissible under the New Mexico statute. However, the linchpin of the decision was the language of the statute, which waived sovereign immunity for "liability for **damages** resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees ...." *Id.* at 69 (emphasis added). Thus, the New Mexico statute is easily distinguishable from the Michigan statute, which does not create liability for damages resulting from bodily injury, but instead makes the government liable for bodily injury and property damage.

In the second case, *Swafford v City of Chattanooga*, 743 SW2d 174 (Tenn Ct App 1987), the Tennessee Court of Appeals addressed whether the Tennessee Governmental Tort Liability Act waived immunity for loss of consortium. The Court cited two separate provisions of the Act. One, in setting the minimum limits of liability coverage under the Act, referred only to "bodily injury or death." *Id.* at 178-179. The other, which waived immunity for injury from unsafe streets and highways, stated that "immunity from suit of a governmental entity is removed for **any injury** caused by defective, unsafe, or dangerous condition ...." *Id.* at 179 (emphasis in original). The Court concluded that the latter waiver of immunity controlled, and therefore that loss of consortium could be recovered. *Id.* Again, as with the New Mexico case,

the language of the statute controlled the issue, and the language of the Tennessee statute is, on its face, a much broader waiver of immunity than contained in the Michigan statute. It is worth noting that the clear implication in *Swafford* is that but for the broad waiver contained in the Tennessee highway statute, loss of consortium would not have fit the definition of a "bodily injury" as used elsewhere in the Act.

In summary, the language of Michigan's motor vehicle exception is clear and unambiguous, and must be given its common and ordinary meaning. The most plain and natural reading of the statute is that governmental agencies are liable only for bodily injury and property damage, assuming the remaining elements of the statutory cause of action are satisfied. This would mean that a governmental agency is liable for injuries to a person's physical constitution, i.e., injuries inflicted on a person's body, but not for injuries that are not themselves "bodily injuries," such as the wage loss claimed here.

D. Plaintiff's Argument that the Motor Vehicle Exception Permits Recovery for All Damages Arising from a Bodily Injury Is A "Threshold" Argument that Has Already Been Rejected By This Court.

Plaintiff argues that the motor vehicle exception should be construed to permit recovery of any and all damages that arise in any fashion from a bodily injury. Plaintiff bases this argument, in part, on the supposition that the phrase "liable for" in the motor vehicle exception means that a governmental agency should be held "responsible for" a bodily injury, including all of the tort consequences of that bodily injury. (Plf's Brf at p 20). Without using the term, Plaintiff's analysis turns the "bodily injury" language in § 1405 into a "threshold" requirement similar to those found in other statutes not related to immunity. The threshold argument has already been rejected by this Court in *Wesche*:

> We reject the *Kik II* panel's conclusion that the motor-vehicle exception creates a threshold for liability that, once met, permits the recovery of damages for loss of consortium. MCL 691.1405

> plainly states that governmental agencies "shall be liable for bodily injury and property damage" resulting from the negligent operation of a motor vehicle. **It does not state or suggest that governmental agencies are liable for any damages once a plaintiff makes a threshold showing of bodily injury or property damage.**

Wesche, 480 Mich at 85-86 (emphasis added).

Aside from having already been rejected by this Court, Plaintiff's "threshold" interpretation is incorrect, on its merits, because it rewrites the statute to avoid giving its terms their plain meanings. Plaintiff's argument would have more force if the statute stated:

> Governmental agencies shall be liable for the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner . . . when that negligence results in bodily injury and property damage.

Clearly, however, this is not how the statute is worded. In direct contrast, the statute states that "[g]overnmental agencies shall be liable for bodily injury and property damage" resulting from the negligent operation of a motor vehicle. MCL 691.1405. There is only one way to read this language narrowly: as creating liability for a specifically defined class of injuries, namely those to the body and to property, to the exclusion of other injuries.

Moreover, our statutes are replete with examples of "liable for" language that does not create a "threshold" for liability, but instead specifically and narrowly defines the type of damages for which liability is created. *See, e.g.*, MCL 30.411 (making the state and its political subdivisions and employees, agents or representatives "not liable for personal injury or property damage" sustained by any person appointed as a member of disaster relief forces); MCL 46.30a(2) (making certain persons "liable for moneys paid to the [person appointed in violation of the section]"); MCL 125.996 (making certain manufacturers or dealers "liable for treble damages"); MCL 3.751(m) (making the Midwest Interstate Low-Level Radioactive Waste Commission "not liable for any costs associated with" an enumerated list of activities; MCL

10.123 (making the state "not liable for removal or costs related to the removal" of consumer products from public display pursuant to MCL 10.122(1)(a)). This list of citations is but a very small sampling of the statutes which use the term "liable for," and an exhaustive collection of each would be futile. As demonstrated by these statutes, it is common for the term "liable for" to be used as a means of identifying a specific and narrow type of liability, rather than as a threshold for unlimited liability.

Comparison of the language in § 1405 to another statute which unequivocally does create a liability "threshold" exposes the flaw in the Plaintiff's argument. Michigan's No-Fault Act contains a well-known and heavily litigated threshold over which a plaintiff must cross before gaining entitlement to noneconomic damages. MCL 500.3135(1). That statute states: "A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." *Id.*

The wording of this statute—which is very different from the wording of MCL 691.1405—demonstrates that the Legislature knows how to create a threshold of liability when it so desires. Section 3135 is worded differently than the motor vehicle exception in that it does not make "a person liable for death, serious impairment of bodily function, or permanent serious disfigurement" that is caused by someone's negligence. If it did, then its wording would be similar to MCL 691.1405, and it would be clear that the "serious impairment" language is not a mere threshold, but is a direct limitation on the types of damages for which a person may be liable. Rather, unlike the motor vehicle exception, Section 3135 preserves "tort liability for noneconomic loss" only if a certain level and type of injury has been sustained.

E. Plaintiff's Reliance on *Hardy v Oakland Co*, 461 Mich 561; 607 NW2d 718 (2000) Is Misplaced.

Plaintiff argues that the motor vehicle exception does not apply *at all* to this case because her claim should be controlled exclusively by the No-Fault Act. To support this argument, Plaintiff cites this Court's decision in *Hardy v Oakland Co*, 461 Mich 561; 607 NW2d 718 (2000). Plaintiff misconstrues that case.

In *Hardy*, this Court held that a plaintiff pursuing a claim against a governmental agency under the motor vehicle exception must *additionally* satisfy the "threshold injury" requirements for pursuing a tort remedy for noneconomic damages under the No-Fault Act. There, the plaintiff argued that because he was suing a governmental agency pursuant to the MCL 691.1405 motor vehicle exception to immunity, he did not have to show a serious impairment of body function as required of plaintiffs pursuing their cause of action outside of the immunity statute. This Court rejected the argument, concluding that as to the limitations on the ability to recover damages, the restrictions of the No-Fault Act "control the broad statement of liability found in the immunity statute." *Hardy*, 461 Mich App at 565. Contrary to Plaintiff's contention in the instant case, this statement does not mean that the No-Fault Act contains a broader waiver of governmental immunity than the one codified in the motor vehicle exception. Rather, the exact opposite is true: The *Hardy* Court concluded that the No-Fault Act's more restrictive requirements allowing recovery for only certain types of serious bodily injuries were not inconsistent with the immunity statute's somewhat less restrictive language allowing recovery for bodily injury regardless of severity. In other words, *Hardy* did not hold that the No-Fault Act allows a plaintiff to recover broader damages than is available under the motor vehicle exception. It is, instead, a case that found no basis for refusing to require a plaintiff to overcome

the more restrictive threshold requirements, even if the immunity statute, on its face, appears less restrictive.

F. The Legislature's Use of the Term "Injury" In Other Sections of the GTLA Does Not Mean that "Bodily Injury" and "Injury" Are Synonymous.

Plaintiff engages in a lengthy effort to persuade the Court to revisit *Wesche* and abandon the definition of "bodily injury" adopted therein. Plaintiff's principal argument is that because other sections of the GTLA use the term "injury," this Court should infer legislative intent that "bodily injury" and "injury" be synonymous. Plaintiff's interpretation of the various statutes is unpersuasive and provides no basis for this Court to revisit *Wesche*.

First, Plaintiff contends that because MCL 691.1403(conditioning the waiver of immunity on actual or constructive knowledge of a highway defect and reasonable time to repair) and MCL 691.1404(conditioning the waiver of immunity under the highway exception on adequate written notice to the defendant) use the term "injuries," this must mean that the Legislature intended the term "bodily injury" used in the highway exception of MCL 691.1402 and the motor vehicle exception of MCL 691.1405 to encompass any injury. What Plaintiff does not explain, however, is why—assuming arguendo that her premise is true—the Legislature did not simply use the term "injuries" in MCL 691.1402 and MCL 691.1405. To adopt Plaintiff's position would be to cross the word "bodily" out of MCL 691.1405, and would violate a cardinal rule of statutory interpretation. *See Apsey v Mem Hosp*, 477 Mich 120, 127; 730 NW2d 695 (2007) ("Whenever possible, every word of a statute should be given meaning. And no word should be treated as surplusage or made nugatory."). Moreover, Plaintiff fails to distinguish between the actual waiver of immunity contained in MCL 691.1402 (which uses the restrictive term "bodily injury"), and the mere conditions placed upon that waiver by the knowledge and notice requirements of MCL 691.1403 and MCL 691.1404. The language of the

conditions is not the actual waiver of immunity, and cannot control the more specific, limited language used in the actual waiver of immunity. It is more than plausible—indeed likely—that in crafting the actual waiver of immunity of MCL 691.1402, the Legislature was focused on the extent of the liability that it was creating. In contrast, in crafting the knowledge and notice requirements, the Legislature's focus would not have been on the scope of the liability created by the highway exception. It would have rather been focused on the scope of the knowledge and notice requirements.

Second, Plaintiff mounts a similar argument based on the wording of the public building exception to immunity, MCL 691.1406. That statute provides, in pertinent part:

> Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. **Governmental agencies are liable for bodily injury and property damage** resulting from a dangerous or defective condition of a public building . . . . **As a condition to any recovery for injuries** sustained by reason of any dangerous or defective public building, the injured person, within 120 days from the time the injury occurred, shall serve a notice on the responsible governmental agency of the occurrence of the injury and the defect. . . .

MCL 691.1406 (emphases added). As Plaintiff's argument goes, the notice provision of this statute, which refers generically to "injuries," defines "the scope of an injured person's recovery . . . ." (Plf's Brf at p 15). Plaintiff has it exactly backwards. The scope of the liability is defined in the sentence "Governmental agencies are liable for bodily injury and property damage . . . ." MCL 691.1406. That sentence is the operative waiver of governmental immunity, and it uses the restrictive phrase "bodily injury." The subsequent notice provision is a condition placed upon the waiver of immunity, but it is not the waiver of immunity itself. It cannot, therefore, control the "scope" of a plaintiff's recovery, as argued here. And, again, to adopt Plaintiff's argument would be to impermissibly strike the word "bodily" from the statute.

Third, Plaintiff points to the very similar language of the proprietary function exception to immunity, MCL 691.1413. That statute states:

> The immunity of the governmental agency shall not apply to actions to recover for **bodily injury or property damage** arising out of the performance of a proprietary function as defined in this section. Proprietary function shall mean any activity which is conducted primarily for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees. No action shall be brought against the governmental agency for **injury or property damage** arising out of the operation of proprietary function, except for injury or loss suffered on or after July 1, 1965.

MCL 691.1413 (emphases added). Once again, Plaintiff's supposition is that because the statute uses the phrase "bodily injury" initially, and the word "injury" subsequently, the two must mean the same thing. As with the other statutes Plaintiff relies upon, she fails to draw a distinction between the waiver of immunity, and in this case, a temporal limitation upon the waiver of immunity. The actual operative language waiving immunity uses the restrictive phrase "bodily injury." The temporal limitation does not. But the temporal limitation—being merely a condition on the waiver of immunity—does not constitute the actual waiver, and its language cannot control the actual waiver. And, as with the other arguments, to adopt Plaintiff's position would be to impermissibly strike the word "bodily" from the statute when there is no textual or logical reason to render it nugatory.

Although Plaintiff makes much of the use of the term "injury" in various provisions of the GTLA, the mere fact that that word was employed in sections that do not constitute the actual waiver of immunity cannot be used to presume that the Legislature intended something less than it actually wrote in the waivers of immunity themselves.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons and authorities, Amicus Curiae Michigan County Road Commission Self-Insurance Pool respectfully requests that this Court reverse the decision of the Court of Appeals. Amicus Curiae Michigan County Road Commission Self-Insurance Pool respectfully requests any additional relief deemed necessary.

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